

**Erie Engineered Products, Inc. and Sheet Metal Workers' International Association Local Union No. 71. Case 3-CA-17405**

January 29, 1993

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, RAUDABAUGH

Upon a charge filed by Sheet Metal Workers' International Association Local Union No. 71, the Union, the General Counsel of the National Labor Relations Board issued an amended complaint on December 10, 1992, against Erie Engineered Products, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and amended complaint, the Respondent has failed to file an answer.

On January 7, 1993, the General Counsel filed a Motion for Summary Judgment. On January 11, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all the allegations in the amended complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 29, 1992, notified the Respondent that unless an answer was received by January 4, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in North Tonawanda, New York, has been engaged in the manufacture of specialty containers. During the 12-month period ending October 31, 1992, the Respondent sold and shipped from its North

Tonawanda, New York facility goods valued in excess of \$50,000 directly to points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Respondent excluding only supervisors, office clerical help, watchmen and guards as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and at all material times the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 1, 1989, to September 30, 1993. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

On or about October 2 and 9 and November 6, 1992, the Respondent unilaterally delayed the issuance of unit employees' paychecks. From about April through about June 1992, the Respondent unilaterally delayed payment of health insurance premiums on behalf of unit employees. On about July 1, 1992, the Respondent unilaterally ceased payment of health insurance premiums on behalf of unit employees, thereby causing the termination of health insurance coverage for unit employees. Since about April 1992, the Respondent has unilaterally ceased payment of fees to the unit employees' 401(k) retirement plan administrator. These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

**CONCLUSION OF LAW**

By unilaterally delaying the issuance of unit employees' paychecks, unilaterally delaying payment of health insurance premiums on behalf of unit employees, unilaterally ceasing payment of health insurance premiums on behalf of unit employees thereby causing

the termination of health insurance coverage for unit employees, and unilaterally ceasing payment of fees to the unit employees' 401(k) administrator, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by delaying or failing to make contractually required payments for health insurance premiums and 401(k), we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, having found that the Respondent has violated Section 8(a)(1) and (5) by delaying issuance of employees' paychecks, we shall order the Respondent to make employees whole for this loss of earnings by paying interest during the period of delay as prescribed in *New Horizons*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, Erie Engineered Products, Inc., North Tonawanda, New York, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to honor its contract with Sheet Metal Workers' International Association Local Union No. 71 on behalf of the employees in the unit set forth

below by unilaterally delaying the issuance of unit employees' paychecks, unilaterally delaying payment of health insurance premiums on behalf of unit employees, unilaterally ceasing payment of health insurance premiums on behalf of unit employees thereby causing the termination of health insurance coverage for unit employees, and unilaterally ceasing payment of fees to the unit employees' 401(k) administrator. The unit is:

All production and maintenance employees of the Respondent excluding only supervisors, office clerical help, watchmen and guards as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make its employees whole, with interest, for losses suffered as a result of the delay in issuance of their paychecks, delay and cessation in payment of health insurance premiums, and cessation of payment of fees to employees' 401(k) administrator in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in North Tonawanda, New York, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board." are not altered, defaced, or covered by any other material.

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor the terms of our collective-bargaining agreement with Sheet Metal Workers' International Association Local Union No. 71, the exclusive representative of our employees in the unit set forth below, by unilaterally delaying the issuance of unit employees' paychecks, unilaterally delaying payment of health insurance premiums on behalf of unit employees, unilaterally ceasing payment of health insurance premiums on behalf of unit employees there-

by causing the termination of health insurance coverage for unit employees, and unilaterally ceasing payment of fees to the unit employees' 401(k) administrator. The unit is:

All of our production and maintenance employees excluding only supervisors, office clerical help, watchmen and guards as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our employees whole with interest for our delay in issuance of their paychecks.

WE WILL make our employees whole with interest for our delay and failure to pay insurance premiums and our failure to make payment of fees to the 401(k) administrator.

ERIE ENGINEERED PRODUCTS, INC.